



Supreme Court of California
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NEWS RELEASE

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FOR IMMEDIATE RELEASE

August 25, 2017

Summary of Cases Accepted and Related Actions During Week of August 21, 2017

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The statement of the issue or issues in each case set out below does not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#17-261 *City of Morgan Hill v. Bushey*, S243042. (H043426; 12 Cal.App.5th 34; Santa Clara County Superior Court; CV292595.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case presents the following issue: Can the electorate use the referendum process to challenge a municipality's zoning designation for an area, which was changed to conform to the municipality's amended general plan, when the result of the referendum — if successful — would leave intact the existing zoning designation that does not conform to the amended general plan?

#17-262 *Heimlich v. Shivji*, S243029. (H042641; 12 Cal.App.5th 152; Santa Clara County Superior Court; CV231939.) Petition for review after the Court of Appeal reversed an order denying a motion for costs. This case presents the following issue: When a party to an arbitration proceeding makes an offer of compromise pursuant to Code of Civil Procedure section 998 and obtains a result in the arbitration more favorable to it than that offer, how, when, and from whom does that party request costs as provided under section 998?

#17-263 *Meza v. Portfolio Recovery Associates*, S242799. (9th Cir. No. 15-16900; 1; 860 F.3d 1218; Northern District of California; No. 5:14-cv-03486-LHK.) Request under California Rules of Court, rule 8.548, that this court decide a question of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. The question presented is: Under section 98, subdivision (a), of the Code of Civil Procedure, must an affiant in a limited jurisdiction matter be physically located and personally available for service of process at an address provided in the affiant's declaration that is within 150 miles of the place of trial?

#17-264 *People v. Gillespie*, S242995. (D069389; nonpublished opinion; San Diego County Superior Court; SCD258034.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Mateo*, S232674 (#16-147), which presents the following issue: In order to convict an aider and abettor of attempted willful, deliberate and premeditated murder under the natural and probable consequences doctrine, must a premeditated attempt to murder have been a natural and probable consequence of the target offense? In other words, should *People v. Favor* (2012) 54 Cal.4th 868 be reconsidered in light of *Alleyne v. United States* (2013) ___ U.S. ___ [113 S.Ct. 2151] and *People v. Chiu* (2014) 59 Cal.4th 155?

#17-265 *Gillotti v. Stewart*, S242568. (C075611; 11 Cal.App.5th 875; Nevada County Superior Court; TCU083162.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court ordered briefing deferred pending decision in *McMillin Albany LLC v. Superior Court*, S229762 (#15-218), which presents the following issue: Does the Right to Repair Act (Civ. Code, § 895 et seq.) preclude a homeowner from bringing common law causes of action for defective conditions that resulted in physical damage to the home?

SEPARATE STATEMENT ON DENIAL OF REVIEW

J.C. v. Superior Court, S243357. (G054816; nonpublished opinion; Orange County Superior Court; 16DP0791.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate.

DISPOSITIONS

Bristol-Myers Squibb Co. v. Superior Court (2016) 1 Cal.5th 783 was transferred for further proceedings in light of *Bristol-Myers Squibb Co. v. Superior Court* (2017) ___ U.S. ___ [137 S. Ct. 1773].

Review in the following case, which was held for *Bristol-Myers Squibb Co. v. Superior Court* (2016) 1 Cal.5th 783 and *Bristol-Myers Squibb Co. v. Superior Court* (2017) ___ U.S. ___ [137 S. Ct. 1773], was dismissed:

#15-129 <i>BNSF Railway Co. v. Superior Court</i>, S226284	(B260798; 235 Cal.App.4th 591; Los Angeles County Superior Court; BC552015, JCCP4674.)
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STATUS

#17-248 *Quigley v. Garden Valley Fire Protection Dist.*, S242250. The court ordered the issues to be briefed and argued in this case limited to the following: May, as the Court of Appeal held, the governmental immunity set forth in Government Code section 850.4 be raised for the first time at trial?

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The Supreme Court of California is the state's highest court and its decisions are binding on all other California state courts. The court's primary role is to decide matters of statewide importance and to maintain uniformity in the law throughout California by reviewing matters from the six districts of the California Courts of Appeal and the fifty-eight county superior courts (the trial courts). Among its other duties, the court also decides all capital appeals and related matters and reviews both attorney and judicial disciplinary matters.